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No. 93-1713

In The Supreme Court of the United States
October Term 1993

DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit

Motion For Permission to File Brief Amicus Curiae in Support of Petitioner

and

Amicus Curiae Brief Of The Polish Historical Society

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The Polish Historical Society (PHS) respectfully moves this Court for permission to file the accompanying *Amicus Curiae* brief in support of Petitioner. Consent was granted by the Petitioner for filing of a brief by the PHS and was filed with this Court's Clerk. Leave from this Court is requested under Rule 37 of this Court.

PHS is an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. The membership of the PHS includes scholars, individuals, U.S. citizens and lawful residents joined by a common interest in history.

The interest of *Amicus* is set forth below. The accompanying brief addresses issues of fact concerning the public at large, the Petitioner and Respondents. It describes both overt and surreptitious censorship, each of which constitute an abridgment of civil rights, not only by Respondents, the Vineyard Haven Public Library, but also by other public libraries as representatives of state and municipal authorities nationwide.

Amicus believes that its brief will supplement rather than reiterate the arguments made by the parties. Due to the national implications of the issues submitted by the Petitioner, PHS respectfully moves this Court for permission to file the *Amicus Curiae* Brief submitted herewith. Respondents oppose the filing of this brief.

Respectfully submitted,

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Amicus Curiae Brief Of The Polish Historical Society in Support of the Petitioner

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TABLE OF CONTENTS

I. Interest of Amicus....1

II. Purpose of Amicus....3

III. Summary of Argument....3

IV. Argument:

1. Public Libraries Ostensibly Observe the First Amendment....4

2. How Public Libraries Fight Outside Censorship....5

3. Public Libraries Vulnerable to Outside Censorship Despite American Library Association Codes....6

4. Forms of Intralibrary Censorship Practiced by Public Libraries....7

- Exclusionary acquisition policy....8
- Covert intralibrary censorship....9

1. Exclusionary labeling....9
2. Prejudicial labeling....9
3. "Silent" censorship....10
4. "Referral" censorship....11

5. Lack of African-American Revisionist Materials in Public Libraries....11

6. Lack of Holocaust Revisionist Materials in Public Libraries....14

7. A Minnesota Library System Is an Exception to the Rule Regarding Nationwide Intralibrary Censorship....18

8. "Books Won't Stay Banned. Ideas Won't Go to Jail. In the Long Run of History, the Censor and the Inquisitor Have Always Lost."....18

V. Conclusion....20

I. INTEREST OF *AMICUS CURIAE*:

The Polish Historical Society [PHS] was established in 1988 as an educational organization committed to the promotion of free access to restricted archival materials pertaining to the history of the First and Second World Wars. PHS specializes in retrieval, collection, and release of archival documentation, which until recently was reposited in archives with restricted access.

The membership of the PHS includes scholars, individuals, citizens and lawful residents of the United States, joined by common interests in the history of both World Wars, including the history of the Jews who prior to 1939 constituted about one tenth of the population of Poland.

Amicus holds itself to be an expert at evaluating the completeness and balance of library collections on the subject of both World Wars. Struck by a profound imbalance on this matter at many major libraries, and then at the Respondent Vineyard Haven Public Library [VHPL], the PHS decided to file the instant brief.

Amicus is committed in principle and practice to the freedoms afforded and protected by the First Amendment and recognizes that scholarly progress cannot proceed without free inquiry. *Amicus* supports affirmative enforcement of the American Library Association's Library Bill of Rights which states that:

> "Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

In the Middle Ages, science and humanities were static and stifled by restriction of speech and thought. This era is consequently now remembered with disapprobation. The Renaissance occurred after freedom of speech and inquiry was won following centuries of effort and through the tenacity of a few.

Freedom of speech and inquiry includes historical revisionism. Revisionism must be an integral part of the historical analysis of both World Wars, because major participants also fought with words. The historical record must be set straight on some fictitious wartime propaganda, especially Soviet press reports, which were then accepted as factual in the West.

Calls for suppression of debate and of historical revisionism appear as a return to the principles of the Dark Ages which, among other

unscientific impositions, claimed that an observable straight horizon is undebatable proof of the flatness of the earth. Justice Louis Brandeis provided an answer for those who are concerned about propriety of historical revisionism:

> "[t]o expose ... fallacies... the remedy... is more speech, not enforced silence."

The revisionist process is already ongoing. For instance, in recent years it was finally publicized world wide that 4,500 Polish officers had been murdered at Katyn by the Soviet NKVD in 1940. Yet, within the past decade, a Soviet documentary shown on American television screens was still blaming the Nazis for this massacre, with backup from supposed local "eyewitnesses" in a wartime propaganda film clip. This example shows that historical revisionism is a never-ending process that on occasion must augment the educational process. Christopher Hitchens, a well-known editor, concluded his December 1993 essay on historical revisionism in *Vanity Fair* as follows:

> "The revisionist endeavor is something that every generation *must* embark upon, whether it's the Holocaust or any other subject."

By analyzing until recently unavailable physical documentation in regard to the Nazi concentration camps (data from wartime aerial photography, post-war archeological explorations, forensic toxicology in regard to Zyklon B and diesel exhaust, and chemical technology of the fabrication of soap), it was realized that many of the World War II Holocaust claims, especially Soviet, were exaggerated, as has been acknowledged by Jewish scholars. Furthermore, in the process of its studies, *Amicus* uncovered a similarity between the patterns of martyrology of the First and the Second World Wars, which provides a new insight into this matter.

Amicus' convictions about the World War II Holocaust have been articulated in a document entitled "Holocaust Is Undeniable But It Should Be Debated," reprinted almost in its entirety on January 1, 1994 by the editors of *The New York Times* under the headline: "Don't Cut Off All Debate About the Holocaust."

Amicus opposes most of the arguments offered by those who have been described as "Holocaust deniers." However, *Amicus* agrees with some scholarly tenets of some Holocaust revisionists, which are also accepted by widely recognized Jewish historians.

II. PURPOSE OF *AMICUS* BRIEF:

The gravamen of the Petitioner's complaint is the discriminatory treatment he received from Respondents, the Tisbury Senior Center and the local Vineyard Haven Public Library [VHPL], both public community forums.

Because the rules of this Court require brevity, Wayfield's Petition asserts, but does not document in depth, an intense censorship, practiced by the Respondent VHPL in contravention of its own regulations. Neither did the Petitioner discuss a similar censorship practiced by library authorities whose guidance the VHPL follows, such as CLAMS [Cape Library Automative Material Sharing], a regional consortium of public libraries; Library of Congress, the national leader in the area of labeling and acquisitions; and OCLC [Online Computer Library Center], the world leader in cataloging. *Amicus'* brief fills this gap and documents such unconstitutional censorship.

III. SUMMARY OF ARGUMENT:

1. It appears that the near total absence in public libraries of World War II and African-American historical revisionist books and materials represents, under color of law, discrimination and abridgment of freedom to speak and read. Examination by *Amicus* of holdings and practices of various libraries revealed that such an abridgment of First Amendment rights is encountered not only at the Respondent Martha's Vineyard library but is practiced nationwide.

Amicus believes that the intense, intralibrary censorship practiced by these libraries is self-imposed. It evolved over decades as a result of insufficient governmental funding and/or overdependence of public libraries upon private contributors. Thus, public libraries were induced to follow politically fashionable trends, and consequently they discriminate against and suppress unpopular views.

2. *Amicus* argues that the singular, 1990 victory of the press (*Chicago Sun-Times*) and public opinion, in overcoming initially successful censorship by private organizations impressed upon a public institution (the Chicago Public Library regarding a comprehensive bibliography of the Palestinian-Israeli conflict prepared by an employee of this library), should not be considered as a sufficient safeguard of First Amendment rights elsewhere. Therefore, affirmative involvement of this Court is needed in the instant case and other such cases.

IV. ARGUMENT:

1. PUBLIC LIBRARIES OSTENSIBLY OBSERVE THE FIRST AMENDMENT:

In order to avoid abridgment of the First Amendment, virtually all public libraries in the United States subscribe to the American Library Association's [ALA] Library Bill of Rights which stipulates that:

> "2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval."

Acquisitions are usually at the forefront of controversies in libraries. Most small libraries do not have a formal, written selection policy for acquisitions, although this is recommended by the ALA. More than likely, their overburdened staff does not have time to prepare such in a written format, and this suffices as long as none of the small number of library users object to this deficiency. Nevertheless, virtually all public libraries accept and practice the precepts set forth in the *Materials Selection Policy Summary* of the Santa Monica Public Library, which calls for diversity and for satisfying the needs of various groups within the community:

> "1. The basic test for selection of any item is whether it is of permanent, current, or potential value to the community. Other criteria include the quality, cost, format, published reviews, public demand, and availability of the material.
>
> 2. Materials are selected to satisfy the prevalent needs and interests of the majority of the community as well as diverse groups within the community.
>
> 3. The Library attempts to present differing viewpoints on contemporary issues, some of which are controversial. Selected materials, therefore, may be meaningful and significant to some individuals, while offensive, shocking, or boring to others. Materials are selected for their overall contribution to collection."

Predicated on limits of budget, shelf space, and degree of community interest, every library is compelled to select and reject printed and audio-visual materials. Libraries also must avoid redundancy on popular topics and establish a balanced presentation of opposing views. Such selection and rejection is necessary and constitutional and does not abridge the spirit of the First Amendment as long as the selection is not discriminatory.

Most libraries do indeed apply the above freedom to read and speak guidelines as long as the censorial pressure comes in the area of topics

debated by the mainstream news media. However, intense and nationwide departures are found in the form of internal censorship in the area of politically unfashionable or unpopular topics, especially if such controversy might affect library funding. Such internal censorship in this area is found nationwide: in small libraries such as the Respondent VHPL, in medium and major libraries in towns and cities, in regional and statewide library systems, and even in the two largest American libraries, the Library of Congress and the New York Public Library.

2. HOW PUBLIC LIBRARIES FIGHT OUTSIDE CENSORSHIP:

The egalitarian policy of libraries is buttressed against any of the outside-of-the-library pressures for favoritism and accusations of censorship. The safeguarding organizations were established by and are located at the Chicago headquarters of the American Library Association [ALA], the oldest and largest in the world organization of 56,000 librarians:

1. The Intellectual Freedom Committee [IFC] was established in 1940 as an advisory unit constantly reviewing and updating the policies which protect, enforce, and address the rights of the First Amendment.

2. The Office of Intellectual Freedom [OIF] was established in 1967 as a watchdog against censorship directed at libraries. Through its monthly *"Newsletter on Intellectual Freedom,"* it informs libraries about outside censorial pressures and ongoing legislative battles at various local courts. One of its permanent columns is devoted to reporting on the decisions of this Court. The last page of this newsletter, entitled "Intellectual Freedom Bibliography," provides the libraries with a digest of American daily press and periodicals on the subject. In addition, the OIF prepared and periodically updates the Intellectual Freedom Manual, available at nearly every public library.

3. The Freedom to Read Foundation [FRF] was established in 1969, essentially to provide legal aid for librarians and libraries accused by the public and/or government of liberalism in acquisition policies. FRF has previously filed with this Court various *amici* briefs opposing outside restrictions on acquisition policies of libraries.

ALA, FRF, OIF and IFC are the authors and sponsors of remarkable documents. The ALA's Library Bill of Rights, the *Magna Carta* for librarians and readers everywhere, protects freedom of speech and diversity of library collections. The FRF's Freedom to

Read Statement stipulates the responsibilities of librarians and lays the ground rules for would-be censors:

> "It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large."

Thus, during the past decades, armed with the above tools, libraries skillfully and forcefully resisted outside censorial pressures in order to protect themselves from potential litigation based on First Amendment contravention, especially when it involved communism, abortion rights, homosexuality, lesbianism and/or pornography. As demonstrated on the following pages, however, libraries fail to do so when subjects are politically unpopular and might, on balance, impact adversely upon their funding. During the October 1988 Term (No. 88-605), the ALA and FRF informed this Court about this shortcoming:

> "function [of] libraries is crucial to the flourishing [of] 'marketplace of ideas' celebrated in this Court's fundamental First Amendment jurisprudence. But despite the tradition of 'freewheeling inquiry' in America's libraries, ... libraries occupy a perilous niche in our society: most of our libraries are publicly founded institutions subject to state control not only through the police power but also through the power of the purse." (ALA's *Amicus* brief, p. 4)

In summary, libraries have developed effective rules, skills and the Library Bill of Rights to defend the freedom to know, read and speak, provided this does not affect their fiscal base. However, libraries lack any built-in safeguards, other than actions of this Court, against their self-imposed internal censorship based on funding pressures.

3. PUBLIC LIBRARIES VULNERABLE TO OUTSIDE CENSORSHIP DESPITE AMERICAN LIBRARY ASSOCIATION CODES:

Libraries' quest for balance of collections and freedom to read and speak usually hinges on the "power of the purse" which often exacts adherence to "political correctness." However, one library, when supported by the mainstream press, won a victory over influential outside censors even though initially it had to cave in to their demands.

In an ongoing process of providing patrons with reading lists on various topics, the Chicago Public Library compiled in 1989 a

bibliography on the Palestinian-Israeli conflict. It included 147 books, containing a balanced mix of pro-Israeli and pro-Palestinian views. According to an expose entitled "The Jewish Thought Police" by Robert Friedman in the July 27, 1993 issue of the New York City based weekly *The Village Voice*:

> "[this] bibliography was widely praised by academics, and was used as a teaching aid by the prestigious Center for Middle East Studies at the University of Chicago. [But then] [i]n August 1989 Chicago's Chief Librarian Samuel F. Morrison received a call from a prominent Jewish patron, complaining about the 'biased' bibliography."

After six months of censorial pressure, according to *The Village Voice*:

> "the library capitulated, agreeing in writing to include more than 30 titles selected by the league in a revised bibliography which would be compiled by someone [else]".

Two weeks later, *Chicago Sun Times* columnist Dennis Byrne revealed attempts of outside censors to influence the Chicago Public Library and thus its readers. After a flurry of letters to the editor and negative press coverage, the censors backed away from their high pressure lobbying campaign, and the bibliography was updated and reprinted for the public in 1990, without outside and/or intralibrary interference.

First Amendment rights remain vulnerable not only for libraries, but also for other institutions. For instance, according to the June 2, 1992 issue of *The Washington Post*, curators of the Smithsonian Institution exhibit entitled "The West as America: Reinterpreting Images of the Frontier, 1820-1920" replaced ten of the fifty-five revisionist exibition texts, when pressured that Congress might reduce funding. Thus, resistance in Chicago to outside censorship is not a sufficient safeguard of the First Amendment rights elsewhere in the United States.

4. FORMS OF INTRALIBRARY CENSORSHIP PRACTICED BY PUBLIC LIBRARIES:

Libraries and librarians rarely practice overt censorship as in the case of the Palestinian/Israeli bibliography prepared for the Chicago Public Library in 1990. More often they utilize methods of surreptitious internal censorship and selection policies. All variants of censorship described below were encountered in connection with the subject of this brief.

Exclusionary acquisition policy:

The most common form of censorship practiced by public libraries is an exclusionary acquisition policy. Printed and audiovisual materials which are disapproved are simply not purchased. To avoid acquiring such materials, libraries follow various practices:

1. When a reader requests the acquisition of a book on an unfavored topic, a librarian invariably accepts the request form, but the library usually does not act upon it. Procrastination commonly vitiates the reader's interest.

2. If a reader pursues his request, the library's response is usually among the following:

- The item has not been reviewed by any leading review journal such as the independent *Library Journal,* or the *Booklist* sponsored by the American Library Association [ALA]. (Librarians *a priori* consider reviews in revisionist journals as not authoritative for this purpose.)
- The item is published by a small and unrecognized publisher, rather than by a well-known publishing house.
- The library's acquisition board will make purchasing decisions.
- The library lacks sufficient funds for the purchase.
- There is a lack of community interest in the subject. When replying thus about Holocaust revisionism, however, many librarians do not consider or are unaware that:

  -- the editor of *Martyrdom and Survival,* the flagship publication of Holocaust survivors in America and of the Yad Vashem Memorial in Jerusalem, wrote in the December 1993 issue that we live in "the era of Revisionism";

  -- at least four anti-revisionist books, highly publicized and acquired by most libraries, have been published in the last two years;

  -- about 60% of about 408 articles about the Jewish Holocaust, published in the past three years in five leading newspapers in the United States, refer to Holocaust revisionism;

  -- 9-22% of adult Americans have doubts about the extent of the Jewish Holocaust according to recent public opinion polls.

3. Libraries exclude controversial material by not accepting it as a gift (as happened in the case of the Respondent library). When rarely accepted, controversial donations:

- have been prematurely weeded out to make room for new acquisitions;

- have been prematurely weeded out because of worn condition and not replaced;
- soon after the donation have disappeared from bookshelves and have not been replaced;
- have been sequestered in a "research room" or labeled as for "reference only," and thus have been accessible only on the library premises.

Covert intralibrary censorship:

For the purpose of this brief, the intralibrary covert censorship practiced by librarians is subdivided into four types: 1. exclusionary labeling, 2. prejudicial labeling, 3. "silent" censorship, and 4. "referral" censorship.

1. **Exclusionary labeling** of unfavored books in cataloging is prevalent. This effectively stymies the reader and prevents access to potential sources.

Censorship by exclusionary labeling is evidenced by the lack of subject headings such as: "African-American revisionism", "Holocaust revisionism" or the holocausts of Amerindians, Armenians, Ukrainians, Gypsies, Cambodians and others, each referring to mass deaths and atrocities against these peoples.

As initiator of subject headings, the Library of Congress is primarily responsible for subject heading deficiencies. The majority of other libraries, public and private, follow its practices. Cataloging centers and local libraries have the option of adjusting and augmenting their subject headings as needed, but rarely exercise it.

2. **Prejudicial labeling** in library catalogs deters prospective readers. It is thoroughly condemned by the ALA in its July 1, 1981, "Statement on Labeling", "[a]n interpretation of the Library Bill of Rights":

> "Labeling is the practice of describing or designing certain library materials by affixing a prejudicial label to them or segregating them by a prejudicial system. The American Library Association opposes this as a means of predisposing people's attitudes towards library materials for the following reasons:
>
> 1. Labeling is an attempt to prejudice attitudes and as such, is a censor's tool.
>
> 2. Some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable. However, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association opposes the establishment of such criteria.

> 3. Libraries do not advocate the ideas found in their collections. The presence of books and other resources in a library does not indicate encouragement of their contents by the library.
>
> The American Library Association opposes efforts which aim at closing any path to knowledge."

Pejorative labeling is illustrated by the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc." The fact that revisionist books are placed into this category undoubtedly contributes to the reluctance of American libraries to acquire them. Conversely, dozens of titles of non-revisionist books that contain factual errors, widely recognized by scholars, about the Jewish Holocaust were not placed into this category.

The Library of Congress is ultimately responsible for faulty labeling of a book. Its Cataloging Directorate, employing about 200 librarians, assigns subject headings for books acquired or submitted prior to printing by publishers. This government-performed labeling is rarely if ever changed by public libraries, and if it is inaccurate, may stigmatize a book forever.

3. **"Silent" censorship** of cataloging is of exclusionary nature. Regarding the subject of the instant case, it misleads readers, including students and professors, who after completion of a substantial catalog search are left with the impression that books on revisionist subjects do not exist.

"Prism" is the world's largest cataloging service, compiled during the last two decades by the Online Computer Library Center [OCLC]. It provides rapid access to about 2,000,000,000 volumes in about 15,000 libraries in the United States and 3,000 in foreign countries.

In May 1994, "Prism" was readily available to the students and faculty at the St. John's University Library in Jamaica, New York. Under the subject heading "Holocaust revisionism", "Prism" listed only two titles. One is a non-revisionist book (probably through a computer error) and the other is a Holocaust revisionist booklet by an unidentified author, published in 1986 in Canada and reposited in a library in Kansas. Hidden under the subheading "Holocaust, Jewish, errors, inventions, etc.", "Prism" listed 52 titles (about 100 copies) of Holocaust revisionist books, constituting labeling too cryptic to be useful for most librarians and readers.

Thus, OCLC systematically excludes revisionist books from their appropriate primary subject heading of "Holocaust revisionism" and/or assigns them to the pejorative subject subheading "Holocaust,

Jewish (1939-1945), errors, inventions, etc." The result is exclusionary censorship. Such censorship has a significantly misleading impact on the knowledge of society in general, because the "Prism" catalog is most frequently used by academic libraries and research services of the news media.

4. **"Referral" censorship** is also found to be practiced nationwide. Libraries refuse to acquire controversial books but suggest that they can be borrowed through an interlibrary loan. Generally, this process takes two to six weeks of waiting for a book if it is not in circulation.

However, it is difficult to see how such requests might be satisfied for some topics. Books cannot be effectively borrowed if there are too few or none to be borrowed. For example, "First Search" lists the album of wartime aerial photos of Nazi concentration camps entitled *Air Photo Evidence...* by John Ball, published in Canada in 1992 (*infra*: page 15), in only one library in the United States, and nowhere else in the world, according to OCLC's catalog database. Not a single library in California has the revisionist book about the Kristalnacht entitled *Flashpoint...* by Ingrid Weckert, published in California in 1991 (*infra:* page 14).

In summary, *Amicus* believes that over the decades, libraries reluctantly developed a panoply of covert censorial techniques, which they successfully use to avoid controversies and to preserve the flow of private and governmental funds to their libraries. To amend a resultant abridgment of First Amendment principles in the instant case and in other such cases, an affirmative ruling is needed from this Court.

5. LACK OF AFRICAN-AMERICAN REVISIONIST MATERIALS IN PUBLIC LIBRARIES:

An authority on the subject of African-American studies, albeit surrounded by controversy, is City College of New York Professor Leonard Jeffries. Within the past year, he was reinstated as the Chairman of the department from which he had been dismissed after 20 years of service. The dismissal followed his public speech four years ago in Albany, New York in which he expressed unpopular views stemming from his research on the ethnic background of slave traders in England and America. Jeffries won a highly publicized March 1994 trial in New York City. In addition to reinstatement, he was awarded $400,000 in damages due to improper dismissal.

Amicus obtained from Professor Jeffries a list of the seven foremost books on the subject of African-American historical revisionism.

These books, rightly or wrongly, claim overrepresentation of persons of the Jewish faith in the slave trade and describe flourishing civilizations in pre-colonial Africa. Their titles are as follows:

1. *Stolen Legacy* by George G. James, pub. in 1954.
2. *Africa: Mother...* by Yosef Ben-Jochannan, pub. in 1988.
3. *Message to the Blackman...* by Elijah Muhammed.
4. *Iceman Inheritance...* by Michael Bradley, pub. in 1991.
5. *African Origin...* by Cheikh A. Diop, pub. in 1974.
6. *Stolen Legacy...* by George G. J. Richardson, pub. in 1988.
7. *Civilization or Barbarism...* by Cheikh A. Diop, pub. in 1991.

Oak Bluffs and Vineyard Haven are little towns on Martha's Vineyard in Massachusetts. Oak Bluffs has a small, year-round community of African-American intellectuals dating back almost 150 years. In summer, it swells with vacationing African-Americans who account for 30% of the summertime Oak Bluffs population.

According to projections of the U.S. Population Census, Oak Bluffs in 1990 consisted of 2,517 white and 193 (or 7.7%) black year-round residents. In 1990, Vineyard Haven consisted of 3,120 year-round inhabitants of which 85 (or 2.9%) were African-American. Because of the three-mile proximity of Vineyard Haven and Oak Bluffs, both are served by the Respondent VHPL.

A search through CLAMS, a computerized catalog of 23 libraries in Martha's Vineyard and the Cape Cod region, which include the Respondent VHPL, revealed that none of the above mentioned African-American revisionist books dealing primarily with the history of American slavery were available at these libraries and none at the Respondent VHPL.

Next, a search through CLAMS for the book entitled *Uncle Tom's Cabin* revealed two copies in the entire Cape Cod/Martha's Vineyard system. Seven libraries in the CLAMS system contain at least thirty-four copies of *Anne Frank, the Diary of a Young Girl*, with the Respondent VHPL containing two copies of this book.

Darien is an old Connecticut coastal town, one of the wealthiest in the United States. According to the projections of the 1990 U.S. Census, the population of Darien in 1993 consisted of about 18,000 inhabitants, 96.5% Caucasians and 0.5% Blacks. Until about two decades ago, Darien was a homogenous community of White Anglo-Saxon Protestants, who were legally and successfully resisting the influx of first Catholics, and then Blacks, Jews, and immigrants. Today, there is a small number of Jewish Americans in Darien and few African-Americans have thus far moved into this community.

According to Connecticut State Library records, the Darien Library "is the busiest public library in Connecticut on a per capita basis." A catalog search through the Connecticut-wide "reQuest", a computerized database encompassing 157 libraries, revealed that the Library of Congress never created a subject heading on African-American revisionism, thus making a search unattainable for someone unfamiliar with this subject. From the seven abovementioned books, the first four were not available at this or any other Connecticut library, while twenty-eight copies of the latter three books were located in "reQuest" libraries.

The Darien Library contains two copies of *Uncle Tom's Cabin*. There are twenty-four copies of the Anne Frank diary in the library, due to the needs of schoolchildren according to the library's administration.

The reference librarians at the New York Public Library, the second largest in the nation, were able to instantly provide *Amicus* the transcript of Professor Jeffries' "offending" speech delivered in 1990. However, in his home city, they were unable to find, in any of the library catalogs available to them (their own or the worldwide OCLC), any of the above-listed African-American revisionist books submitted by Professor Jeffries. This example provides illustration of institutionalized suppression and "silent" censorship.

In summary, *Amicus* believes that:

- The absence of African-American revisionist books at the Respondent library is discriminatory and contradicts the library's written policy claiming adherence to and encouragement of diversity of subjects and viewpoints.

- The paucity of African-American revisionist books in 157 Connecticut libraries contradicts the libraries' own written policy regarding diversity of subjects and viewpoints, prescribed in the Intellectual Freedom Handbook published by the Connecticut Library Association. Thus it may represent, under color of law, discrimination, censorship and/or abridgment of freedom to speak and read.

- The failure of the Library of Congress, the national leader in labeling, to create a subject heading on African-American revisionism effectively blacked out this subject nationwide and deprived citizens of their right to read and know divergent views, in contravention of the First Amendment.

6. LACK OF HOLOCAUST REVISIONIST MATERIALS IN PUBLIC LIBRARIES:

Examination by *Amicus* of Vineyard Haven Public Library:

In April, 1994, the Respondent Library (VHPL), with a total of about 50,000 volumes in its stacks, was visited by an *Amicus* representative. The purpose of the visit was to examine its holdings primarily for the presence or absence of any Holocaust revisionist materials. This visit confirmed that the Petitioner's multiple requests over a number of years, that the VPHL purchase such materials or accept them as donations, had proved unsuccessful.

At first, a reference librarian was requested to help. She appeared eager and very familiar with the term "Holocaust." The library catalog's subject heading "Holocaust, Jewish" revealed the presence of 23 books. She seemed vaguely familiar with the term "revisionism", but her enthusiasm faltered into disappointment and exasperation when she realized that "revisionism" was absent from among 133 subheadings on the Holocaust. She exhausted all possibilities of her library's own computerized catalog and those of the CLAMS, a computerized database system which encompasses 23 regional libraries. She suggested that on some other day, the Boston Public Library might be of help in finding such books. Neither she nor two other librarians on duty knew that for Holocaust revisionist materials they should search the holdings of other CLAMS libraries under the subject subheading "Holocaust, Jewish (1939-1945), errors, inventions, etc."

Then, the *Amicus* representative personally checked the VHPL catalog and shelves as well as the CLAMS database without any librarian's assistance. It was found that VHPL uses the Library of Congress subject headings and the Dewey Decimal cataloging system. In these systems of classification, "Holocaust, Jewish (1939-1945)" is subdivided into 314 subheadings. Neither a subheading "Holocaust, Jewish (1939-1945), revisionism" nor the subject heading "Revisionism" exist.

Next, the VHPL catalogs were checked for the presence or absence of three foremost Holocaust revisionist titles and books:

- *The Hoax of the Twentieth Century* by Arthur R. Butz, Noontide Press, 1976, a re-evaluation of the "Final Solution" by a tenured Northwestern University professor;
- *Flashpoint: Kristallnacht 1938, Instigators, Victims and Beneficiaries* by Ingrid Weckert, Noontide Press, 1991, authored by a German librarian fluent in English and Hebrew;

- *Air Photo Evidence, Auschwitz, Treblinka...* by John C. Ball, Ball Resource Services, 1992; an album of high resolution wartime aerial photographs of Nazi concentration camps and the site of the Katyn massacre.

None of these books could be found on the VHPL shelves or in the VHPL and CLAMS catalogs. This exhausted the potential resources of the Respondent library and its regional database in regard to Holocaust revisionism.

At this point, an average Martha's Vineyard reader would have dropped his or her search for revisionism or Holocaust revisionism, considering this to be a marginal fad, not worthy of attention because of lack of documentation.

Examination by *Amicus* of Holocaust Revisionist Holdings in Libraries of Medium-Sized Cities:

The next phase of examining the availability of revisionist materials was accomplished in Stamford, Connecticut, a medium-sized city in the New York metropolitan area. Its Ferguson Library contains about 500,000 volumes on its shelves, uses the Library of Congress subject heading classification along with "reQuest", a statewide computerized catalog encompassing 157 libraries, and "InfoTrack," an index to 1,100 American periodicals and five major newspapers.

At different times, two reference librarians at the Ferguson Library were asked in early 1994 for help in locating any Holocaust revisionist materials. These librarians checked the library's computerized catalog through subject heading and word searches, which yielded no results. They then said that they could proceed no further unless the requester knew the name of some revisionist book.

At this point, an average reader would likely have abandoned the search. However, *Amicus* discovered that under the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc.", the "reQuest" computerized catalog lists 12 books, of which 6 are revisionist and 6 are anti-revisionist.

Examination by *Amicus* of Holocaust Revisionist Holdings in Large City Libraries:

Cincinnati, Ohio is a large industrial city with large universities. The Cincinnati Public Library contains about 5,000,000 volumes. It is conjoined with other libraries in the state within OhioLINK, a computerized catalog network. University libraries in Ohio are conjoined within UCLID, an academic computerized catalog network listing scholarly books and materials. Both of these computerized catalog systems use the Library of Congress subject headings.

In early 1994, a word search through UCLID of "Holocaust" yielded 747 book titles. At the University of Cincinnati, two reference librarians, familiar with the term "Holocaust revisionism," were unable to locate the subheading "Holocaust, Jewish (1939-1945), revisionism" and were perplexed by its absence among the 314 detailed subheadings on the Holocaust. After careful scrutiny of the available subheadings, one of the librarians selected "Holocaust, Jewish (1939-1945), errors, inventions, etc." It yielded the titles of two anti-revisionist books published in 1992 and one in 1993, but no revisionist books.

According to the UCLID catalog, not a single author or book title pertaining to Holocaust revisionism is available at academic libraries in the State of Ohio. At this point, an average Ohio graduate student would likely have discontinued his or her search for revisionism.

The modern and well-equipped Cincinnati Public Library provides uniquely unrestricted and self-help access for its users to the gargantuan database of the costly, OCLC-based, computerized reference service called "First Search", encompassing about 15,000 American and 3,000 foreign libraries.

In 1994, at the Cincinnati Public Library the OCLC database search yielded 8,881 titles on the subject "Holocaust, Jewish (1939-1945). The subject search "Revisionism" yielded 139 titles, mostly related to Leon Trotsky's revisionism of Bolshevism and revisionism in a field of engineering, frequently in foreign languages.

Spurred by her earlier interest in anti-revisionism, a reference librarian at the Cincinnati Public Library conducted an indirect search and came upon the subject heading "Holocaust, Jewish (1939-1945), errors, inventions, etc." This heading yielded 149 titles in the OCLC catalog. The *Amicus* representative was able to identify 52 of these as representing Holocaust revisionist books, many of which were in French, German, Spanish, Swedish and Italian. Among them were two of the three (*supra*: pages 14 and 15) foremost Holocaust revisionist books in the English language:

1. The OCLC's "First Search" catalog lists the Arthur R. Butz book, *The Hoax of the Twentieth Century* (of which about 30,000 copies in six printings have been sold), in five libraries, all in the United States:

> Library of Congress, Columbus Metropolitan Library in Ohio, St. John's University in Minnesota, Concocheague District Library in Pennsylvania, Manitowoc Public Library in Minnesota.

2. The OCLC's "First Search" catalog lists John C. Ball's album, *Air*

Photo Evidence, Auschwitz, Treblinka... in a single library:

> Allen County Public Library, Fort Wayne, Indiana.

The abovementioned revisionist book was purchased by this library in March 1994. By June 1994 it had circulated five times, which is on a par with bestsellers, even though this book has never been reviewed or even mentioned in any mainstream publication. On the other hand, non-revisionist Holocaust books, likewise not reviewed in the mainstream press but acquired by libraries, frequently do not circulate, or are read once or twice over the years.

3. The availability of Ingrid Weckert's *Flashpoint* was examined through the OCLC's catalog service "Prism" (*supra*: page 10), available at the St. John's University Library in Jamaica, New York. "Prism" lists *Flashpoint...* in nine libraries, all in the United States:

> Fairfield University Library in Connecticut, Fordham University Library in New York, Purdue University Library in Indiana, University of Michigan Library in Michigan, St. John's University Library in Minnesota, Newark Public Library in New Jersey, Milwaukee Public Library in Wisconsin, Prescott Public Library in Arizona, and Allen County Public Library in Fort Wayne, Indiana.

Flashpoint... is a scholarly book with an alternative view on the background of the Kristalnacht. According to the "Prism" catalog, three years after its publication, *Flashpoint...* has not been acquired by the Library of Congress, the largest in the world library holding over 101 millions of volumes, nor the New York Public Library, the largest in the world "non-statutory" library holding 18 million volumes.

From the above analysis, one has to conclude that the unofficial, but *de facto,* restriction on the acquiring and labeling of Holocaust revisionist materials is nearly complete and results from:

> "the shadow of fear cast by these [censorial] pressures [which] lead, we suspect, to even larger voluntary curtailment of expression by those who seek to avoid controversy"

as predicted in the 1981 Freedom to Read Statement of the American Library Association and the Freedom to Read Foundation.

In summary, ***Amicus*** believes that:

- Despite repetitious requests by the Petitioner over the last ten years for any Holocaust revisionist book to be purchased or accepted as a donation, not a single such volume had been acquired by the Respondent library as of April 1994, through its practice of exclusionary censorship.

- The nationwide and intense censorial acquisition practices against Holocaust revisionism exercised for decades by small, medium, and large American libraries are conducted against the libraries' own rules, and are augmented by censorial cataloging practices introduced by the Library of Congress.

7. A MINNESOTA LIBRARY SYSTEM IS AN EXCEPTION TO THE RULE REGARDING NATIONWIDE INTRALIBRARY CENSORSHIP:

The prevailing, nationwide intralibrary censorship and blackout of African-American and Holocaust revisionism at public libraries is not total. For instance, the Hennepin County Library System, consisting of twenty-five library branches in Minnesota, expanded the list of Holocaust subject headings as follows:

> Armenian genocide; Gay Holocaust; Holocaust, Jewish (1933-1945); Holocaust Revisionism; Holocaust, Soviet; Native Americans' Holocaust; Polish Holocaust; and Romany Holocaust.

The first Holocaust revisionist book, entitled *Le Mensonge d'Ulyse*, was written in 1950 by Paul Rassiner, a French geographer and survivor of Nazi concentration camps including Buchenwald. Since then, about 100 additional Holocaust revisionist books have been printed, with the 1992 *Air Photo Evidence* ... album of the Allied wartime aerial photography of the Nazi concentration camps (*supra*: page 15) being the most recent and most evidentiary.

In contrast to the Hennepin County Library System containing only 219,000 book titles, the vast Library of Congress has yet to establish a Holocaust revisionism category, even though there has long existed a group of books to which this label is directly applicable, so as to lead a prospective reader thereto directly and via the most commonly used terminology.

On the other hand, the Library of Congress established 215 subdivisions for most of the 314 Holocaust sub-headings, e.g. "Personal narratives" (of Holocaust survivors) which permit access to 480 book titles. Some of these subdivisions encompass only one book, e.g. referring to a small Polish village, Wlodawka.

Amicus believes that only an affirmative order of this Court in the instant case will ameliorate such intralibrary censorship practiced at the Respondent library and other public libraries in the United States.

8. "BOOKS WON'T STAY BANNED. IDEAS WON'T GO TO JAIL. IN THE LONG RUN OF HISTORY, THE CENSOR AND THE INQUISITOR HAVE ALWAYS LOST."

The renowned Polish astronomer Nicholas Copernicus is a good example of how correct scientific ideas based on observations of

physical facts (instead of eyewitness testimony that the earth is flat) were initially ostracized and labeled as "lunatic" (actually solarian). Copernicus, not protected by the First Amendment, could have his (then outlandish) discovery published only posthumously (in 1543). For almost two centuries, the heliocentric theory was magisterially proscribed *per curiam* and his books were banned. Vanguard and prescient scholars perished at the stake (Giordano Bruno in 1600), or were forced to recant (Galileo Galilei in 1633).

Despite persecutions and erroneous adjudication of science by the highest contemporary courts, the "lunatic fringe" theory of earth revolving around sun, with passage of time, become accepted as fact. Copernicus' theory of "earth revolutions around the sun" soon gave origin to the naming of historical events, first of the English (1688), and later American and French *Revolutions*.

Today, the intellectual importance of historical revisionism is politically decried and underrated. Its leaders have been assassinated (revisionist publisher Francois Duprai in France in 1976), bludgeoned (Professor Robert Faurisson in France in 1989), and banned, arrested and jailed (British historian David Irving, from Australia in 1993, in Canada in 1992, and in England in 1994). Faced with the well publicized, recent devaluation of exaggerated World War II Holocaust claims, one must consider that in the future, some aspects of historical revisionism might follow the fate not of lunacy but of heliocentricity. The history of jurisprudence (and especially of the great Galilean trial) teaches that it is best for the courts not to adjudicate the leading edge of science.

Conversely, the recent history of science reveals that legislation favoring one side in a political or historic debate does not withstand the test of free scholarly inquiry. Such happened in the case of the racist theories of Nazism (Friedrich Nietzsche), the enviro-genetic theories of Communism (Trofim Lysenko), and the Soviet-provided 4,000,000 victim count of the Auschwitz concentration camp, officially reduced to about 1,500,000 in 1990, and to less than 800,000 in 1993. Nevertheless, in May of 1994, the German Bundesrat (Senate) passed a bill cutting off all debate on the World War II Holocaust.

"Books won't stay banned. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost," wrote Yale University President A. Whitney Griswold in 1952. But forty years later, at this renowned institution, ideas of historical revisionism are

still quashed and at its famous Sterling Library, revisionists' books are still banned. It seems that over the centuries some academicians have insufficiently learned from the history of science and jurisprudence.

In December of 1993, editors of the Brandeis University campus newspaper supported the concept of free speech by printing a preposterous advertisement of a populist Holocaust denier proclaiming that:

> "[t]he U.S. Holocaust Memorial Museum displays no proof anywhere of homicidal 'gassing' chambers and no proof that even *one individual* was 'gassed'..."

The newspaper was likely inspired by the words of Justice Louis Brandeis who in 1927 wrote:

> "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by process of education, the remedy to be applied is more speech, not enforced silence."

Accurate knowledge of history is essential for the future well-being of all. George Santayana wrote that those who disregard the past are bound to repeat it.

V. CONCLUSION:

Public libraries have their own rules and codes but are also subject to outside pressures through their dependence on state and local funding as well as private organizational and individual contributions. *Amicus* found that library contents in at least two forms of unpopular historical revisionism are absent at the Respondent library which was accused of such censorship in the instant case, and absent and/or markedly underrepresented at most public libraries. Because libraries have not developed significant safeguards against intralibrary censorship, and for all of the foregoing reasons and for the reasons set forth in Petitioner's brief, *Amicus* respectfully requests this Court to grant the writ of certiorari submitted by the Petitioner.

Respectfully submitted,

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June, 1994

VI. CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of June, 1994, I caused to be served by first class mail, postage prepaid, a copy of Motion for Permission to File Amicus Curiae Brief and Amicus Brief of the Polish Historical Society upon:

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All parties required to be served have been served.

_____

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